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No. 87-930

In The

Supreme Court of the United States

October Term, 1987

JAMES D.,

Petitioner,

vs.

CALIFORNIA,

Respondent.

PETITIONER'S REPLY TO RESPONENT'S BRIEF IN OPPOSITION

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Petitioner James D. respectfully offers this Reply to Respondent's Brief in Opposition to the Petition for a Writ of Certiorari. Respondent's hyperbolic argument, cloaked in language suggesting its "reasonableness," intends to distract this Court's attention from the superficial and imperfect reasoning of the lower court. Thoughtful analysis of the Brief in Opposition, and the lower court's opinion, reveals a common disregard for the Fourth Amendment rights of tens of thousands of Californians which this Court must not countenance.

The primary example of Respondent's flawed argument is found in the "statistical justification" for truancy

detentions of people who may appear 16 or 17 years old. The fact that "9 out of 10 16-18 year olds in the state are subject to full time compulsory education" is irrelevant to determining whether random detentions of people who appear to be 16 or 17 years old "advance the public interest" in compulsory education. The privacy interest at stake here is the freedom of youthful appearing people to use public sidewalks and city streets during the school day; this right is of little concern to the vast majority of students, subject to compulsory full time education, who remain upon the school grounds during regular school hours. Thus it is misleading to offer this ratio as justification for the reasonableness of truancy detentions based upon youthful appearance.

As with any demographic analysis, the subject population must bear some relation to the theory being tested. Accordingly, the ratio relevant to the instant analysis of truancy detentions is properly expressed as the number of students absent from school without valid excuse vis-a-vis those people who may physically appear to be school age but are legitimately out in public because they are exempt, excused or have reached the age of 18. In this light the statistics supplied in Respondent's Appendix B are of little, if any, utility. However, employing the proper test groups, the figures *most favorable to Respondent's theory* show that about one in thirty youthful appearing people in public during school hours may be truant.[1] Thus prop-

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1. These statistics do not include single-day totals for unexcused absences for comparison with approximately 110,000 students excused or exempt from full time education.

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er, albeit rudimentary, statistical analysis contradicts the assertion that youthful appearance may supply a reasonable suspicion of truant behavior.

Respondent's correlative theory, that detentions based upon youthful appearance are "the *only effective means* of identifying and locating truants" has neither statistical support, nor has it proven true in practice. A one in thirty chance that an uninformed patrol officer may detain someone actually truant can hardly be characterized as an efficacious means of enforcing compulsory education laws. For instance, the detention of Petitioner, a college student who was subjected to a search of his person, had no relation to identifying him as a truant and displayed the inadequacy of this method of promoting pupil attendance. Additionally, the statutory provisions regarding school attendance review boards and improved pupil attendance provide alternatives to random detentions which are far less intrusive means of identifying and locating truants.

Indeed, Respondent's unsupported assertion that prohibition of such random seizures would "derail the mechanism designed to enforce compulsory education" flies

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(56,629 exempt plus 53,121 excused; see Respondent's Brief in Opposition, p. 14 and Appendix B.) Further, as pointed out in the Petition, the statistics do not encompass those physically less mature people 18 years or older who may be in public places during school hours. Nor can they include those students excused from class for one of the reasons listed in Education Code section 48205. The ratio used for illustration in the text is based upon the statistic for habitual truants and assumes *all* such truants would be absent from school *on the same day,* throughout the school year.

in the face of the legislation itself. To the extent the police have a role to play, the legislation indicates their involvement should be predicated upon a request for assistance from, and close cooperation with, the school district.[2] The very nature of detentions based upon youthful

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2. Education Code section 48320 provides:

> (a) In enacting this article it is the intent of the Legislature that intensive guidance and coordinated community services may be provided to meet the special needs of pupils with school attendance problems or school behavior problems.
>
> (b) Any school attendance review board, established pursuant to this article, which determines that available public and private services are insufficient or inappropriate to correct school attendance or school behavior problems of minors may:
>
> (1) Propose and promote the use of alternatives to the juvenile court system.
>
> (2) Provide, in any proposed alternative, for maximum utilization of community and regional resources appropriately employed in behalf of minors prior to any involvement with the judicial system.
>
> (3) Encourage an understanding that any alternative based on the utilization of community resources carries an inherent agency and citizen commitment directed toward the continuing improvement of such resources and the creation of resources where none exist.

Education Code section 48340 provides:

In enacting this article it is the intent of the Legislature to encourage school districts and county offices of education maintaining any classes in kindergarten and grades 1 to 12, inclusive, to adopt pupil attendance policies based on the active involvement of parents, pupils, teachers, administrators, other personnel, and community members which include proposals and procedures for the following:

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appearance belies the claim of any structure or design to such practices; these seizures take place upon the whim of officers on patrol. Clearly, the legislature has designed a mechanism implemented by and within the individual school district, which is effective in identifying truant pupils without unsolicited assistance from police.

Regarding the intrusiveness of such seizures, Respondent focuses on the nature of a truancy *arrest* as being "limited." While the continued validity of that assertion has recently been placed in doubt,[3] again Respondent has sought to divert the Court's attention from the true issue. Simply put, a truancy *detention* has all the attributes of similar seizures in the criminal context. A youthful detainee will be questioned by the authorities and often searched, as was Petitioner. Approval of the police practices in the instant case portends future abuse of this

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(a) Notifying parents of pupil absences, including notification of parents on the day of each absence.

(b) Increasing parent and pupil awareness of the importance of regular pupil attendance.

(c) Auditing and accountability of pupil attendance.

(d) Staff development for certificated and classified personnel.

(e) Alternative learning programs designed to respond to the different ways pupils learn, such as independent study.

(f) Joint efforts between law enforcement and schools, such as school level attendance review teams and periodic efforts to return truant pupils to school.

3. In *In re Michael G.*, 44 Cal.3d 285, — Cal. Rptr. — (1988), the California Supreme Court approved confinement in a secure facility of an habitual truant who was found in contempt of a Juvenile Court order that he attend school. This holding permitted the incarceration of a status offender for contempt provided certain findings were made.

standardless procedure; the questions asked of Petitioner reflect the personal predilections of these officers to extricate an "undesirable" from an exclusive neighborhood rather than a bona fide concern for his educational progress. Insofar as the intrusiveness of a truancy detention is indistinguishable from detention of a criminal suspect, the lower court and Respondent would afford individuals suspected of committing crimes greater Fourth Amendment protections than law-abiding young people who dare venture out into public during the school day.

Finally, Respondent insists youthful appearance is a factor police rely upon in all sorts of investigative detentions. Notably, the examples offered, of driving a car or possessing alcohol, involve highly regulated activities which are *privileges* conferred by the state as opposed to inherent rights of the people under the Constitution. In the former context, this Court has recognized a reduced expectation of privacy "derived from the pervasive regulation of vehicles capable of traveling on the public highways." (*California v. Carney,* 471 U.S. 386, 392 (1985), citation omitted.) Surely it would be anomalous to hold that youthful appearance reduces one's expectation of privacy while in public merely because school is in session somewhere in the community. In this respect "youthful appearance while school is in session" resembles other factors, like "presence in a high crime area," which may be used to justify repeated intrusions into the privacy of people who fall into a category, or are in a particular place, without any consideration of their individual conduct, a practice denounced by this Court and the lower court. (*Reid v. Georgia,* 448 U.S. 438, 441 (1980); *People v. Bower,* 24 Cal.3d 638, 645, 156 Cal. Rptr. 856 (1979); *People v. Aldridge,* 35 Cal.3d 473, 478-479, 198 Cal. Rptr. 538 (1984).)

Because youthful appearance cannot justify a truancy detention, and in the face of Respondent's and the lower court's failure to point out any other fact indicative of truant behavior, the detention of Petitioner violated the Fourth Amendment. To avoid future violations of the Fourth Amendment rights of thousands of young Californians, this Court must prohibit random seizures for truancy investigations by uninformed police officers on routine patrol.

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CONCLUSION

For all the aforementioned reasons Petitioner urges this Court to grant the Petition for Writ of Certiorari and thereafter reverse the decision of the California Supreme Court.

DATED: March 7, 1988

Respectfully submitted,

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